

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 343

IN THE MATTER OF:

Served March 10, 1964

Application of Holiday Tours, Inc.,)
for a Certificate of Public)
Convenience and Necessity.)

Application No. 18

Docket No. 31

APPEARANCES: As previously noted.

Holiday Tours, Inc., seasonably filed an application for a certificate of public convenience and necessity under the "grandfather" provisions of Section 4(a) of the Compact. By Order No. 334, served December 13, 1963, the Commission denied the application, finding that Holiday Tours, Inc., had not been engaged in any transportation requiring a certificate on the effective date of the Compact. Reconsideration was requested by the applicant, and granted by the Commission on January 29, 1964, by Order No. 340.

The application for reconsideration sets forth numerous specified errors, claiming procedural defects and findings not supported by substantial evidence.

We have reviewed the procedural attacks and find that all of them are without merit. Therefore, we reaffirm all of our procedural adjudications set forth in Order No. 334, including affirmation of the examiner's rulings on exhibits.

No objections have been raised to our prior description, in Order 334, of applicant's mode of operation and pre-Compact regulation and, therefore, we affirm it as a part of our determination herein.

Two salient questions are presented on reconsideration:

1. Was the transportation rendered in buses performed by the applicant or the common carriers that owned them?
2. Were the limousine operations taxicab in nature?

Applicant's position: It is the contention of the applicant that it was engaged in the sightseeing business as a carrier and that such business was operated by it in limousines and buses. It vigorously advocates that all transportation rendered in buses was actually performed by it. The buses were, it is claimed, leased or rented by it and while so leased or rented were under the exclusive control, direction, and operation of Holiday Tours. It further contends that since it lacked only ownership of the vehicles it was "bona fide" engaged in bus transportation. As to the limousine operations, Holiday contends that these were not taxicab operations, because more than 8 passengers had been transported in a vehicle at a time, that the operations were tours conducted on schedules, and not at the direction of the passenger.

Protestants' position: The protestants counter the position of the applicant by pointing out that applicant had no authority to operate buses, and has advanced no basis for even claiming to operate under a claim of right; that the pattern of Holiday's business was to render service in limousines until it had more passengers than could be handled in those vehicles, and then would charter a bus from a duly authorized common carrier; that the transportation rendered in the buses was performed by the common carriers inasmuch as they owned the buses, paid the drivers, withheld, collected, and paid social security, fuel, and other taxes; were authorized by law to perform the operations; in short, all the indices of actual operations. As to limousine operations, protestants claim that the service was performed in vehicles designed to carry no more than 8 passengers, that this type of operation was similar to that of more than a hundred other limousine operators in the metropolitan area, which service had been classified as taxicab service by the Interstate Commerce Commission.

The Commission is of the opinion and finds that Holiday Tours was not bona fide engaged in bus operations. The bus operations can only be classified as being that of the common carriers, chartered by Holiday Tours to transport the people for whom it had arranged the transportation. The Commission recognizes that the practice of limousine operators chartering buses is widespread throughout the industry. However, there is no evidence to prove that applicant held itself out to engage in bus service. None of its advertising makes this claim, nor did it attempt to secure the necessary certificates from the appropriate authorities. The buses utilized were marked and painted in the scheme of the common carriers and applicant posted no signs thereon to indicate that the buses were under its direction and control. The utilization of guides on vehicles driven by drivers unfamiliar with the wishes of Holiday Tours is not conclusive nor even persuasive when all the circumstances are considered. We can place little credence on the testimony that the Interstate Commerce Commission advised applicant that it did not need a certificate prior to rendering bus service.

The Warrenner decision in 1958 (77 MCC 213) and the A. B. & W. vs. D. C. Transit System, Inc., decision in 1960 (83 MCC 547) renders such testimony entirely inconsistent with official decisions of the Interstate Commerce Commission. We conclude that the bus operations were charter services rendered by the common carriers, i.e. the transportation of persons arranged by someone (Holiday) other than the carrier.

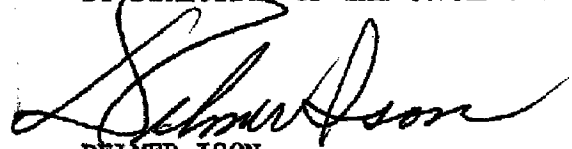
Applicant's operations by limousine prior to the effective date of the Compact were obviously conducted under the exemption provision of Section 203(b)(2) of the Interstate Commerce Act. That proviso exempted operations conducted in taxicabs or other motor vehicles performing a bona fide taxicab service. That Commission held, in Motor Carrier Operations Between Washington, D. C., and Mount Vernon, Va., 51 MCC 197, that the transportation of passengers in "so-called limousine-sightseeing vehicles" is a bona fide taxicab service. Any transportation beyond the scope of that proviso was illegal, especially the carrying of more than 6 passengers in one vehicle, not performed under color of right, and therefore not bona fide.

Despite applicant's contention, we find that its limousine operations come within the meaning of taxicab service as defined in Section 2(d) of the Compact. The so-called "scheduled" service admittedly was not rendered when there were no passengers seeking service and such service, when rendered, was at the request of prospective passengers. The applicant has not advanced any "color of authority" to justify its claim that it was "bona fide" engaged in operations other than taxicab service. Transporting more than six passengers in one vehicle was illegal in interstate commerce and, having given no legal basis for so doing, cannot now claim that such transportation was "in good faith".

Inasmuch as the Commission has found that the applicant, Holiday Tours, Inc., was bona fide engaged only in performing a taxicab operation on March 22, 1961, the denial of the application for a certificate of public convenience and necessity should be affirmed, and Order No. 334, as modified herein, affirmed.

THEREFORE, IT IS ORDERED that Order No. 334 be, and it is hereby, modified as hereinabove provided and our decision to deny the application affirmed.

BY DIRECTION OF THE COMMISSION:


DELMER ISON
Executive Director